

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

EDWARD C. ALLEN,

Plaintiff,

V.

WESTERN GOVERNORS UNIVERSITY, et al.,

## Defendants.

Case No. 2:25-cv-00325-RFB-NJK

## Order

[Docket No. 30]

The parties' joint proposed discovery plan was due no later than June 6, 2025. *See Docket* (notice of appearance of defense counsel, filed April 21, 2025). When the parties failed to comply, the Court ordered them to file their joint proposed discovery plan no later than 1, 2025. Docket No. 29. Instead, the parties have filed a joint motion to stay discovery. *See* Docket No. 30. The Court does not require a hearing. *See Local Rule 78-1.*

## I. PARTY CONFUSION

The parties are confused as to the governing test for this common motion practice.<sup>1</sup> The parties brief and discuss only the minority so-called “good cause” test. *See Docket No. 30.* The parties provide no briefing or discussion of the majority “preliminary peek” test. *Id.* The Court understands that there is confusion in the local bar created by the emergence of a minority approach that runs counter to decades of established case law. *See Flynn v. Nev.*, 345 F.R.D. 338, 347-48 (D. Nev. 2024). The undersigned has, however, clearly and unequivocally rejected the minority so-called “good cause” test<sup>2</sup> as both legally untenable and counter to numerous policy considerations. *See id.* at 347-51. In addition, the majority of judges in this District continue to

<sup>25</sup> 1 Even when the parties do not do so, the Court has its own duty to correctly articulate and  
26 apply the law. *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1224 (9th Cir. 2000).

<sup>27</sup> The “good cause” test is a misnomer, as the preliminary peek framework is itself also an application of the good cause requirement pursuant to Rule 26(c) of the Federal Rules of Civil Procedure. See *Flynn*, 345 F.R.D. at 346 at n.13.

1 apply the preliminary peek test. *See, e.g., Alvarado v. W. Range Ass'n*, 2025 WL 659352, at \*1  
 2 n.1 (D. Nev. Feb. 28, 2025) (Baldwin, J.); *Gauler v. Internal Rev. Serv.*, 2024 WL 4307847, at \*2  
 3 (D. Nev. Sept. 26, 2024) (Denney, J.); *Blandino v. Las Vegas Metro. Police Dept.*, 2024 WL  
 4 4024828, at \*1 (D. Nev. May 10, 2024) (Youchah, J.), *objections overruled*, 2024 WL 5056178,  
 5 at \*4 (D. Nev. Dec. 9, 2024) (Navarro, J.) ("The Magistrate Judge applied the correct legal  
 6 standard"). For the reasons already articulated in *Flynn*, the undersigned will not apply the  
 7 minority so-called "good cause" approach.

8 **II. ANALYSIS**

9 The Court has broad discretionary power to control discovery. *See, e.g., Little v. City of*  
 10 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). "The Federal Rules of Civil Procedure do not provide  
 11 for automatic or blanket stays of discovery when a potentially dispositive motion is pending."  
 12 *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 601 (D. Nev. 2011). The party seeking a stay of  
 13 discovery bears the heavy burden of making a strong showing that discovery should be denied.  
 14 *Turner Broad. Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). Discovery may  
 15 be stayed when: (1) there is a pending motion that is potentially dispositive in scope and effect;  
 16 (2) the potentially dispositive motion can be decided without additional discovery; and (3) the  
 17 Court has taken a "preliminary peek" at the merits of the underlying motion and is convinced that  
 18 Plaintiff will be unable to state a claim for relief. *Kor Media Group, LLC v. Green*, 294 F.R.D.  
 19 579, 581 (D. Nev. 2013). "These are not 'factors' for consideration, they are elements of a test  
 20 that must all be met for a stay of discovery to be warranted." *Flynn*, 345 F.R.D. at 346 n.12.

21 The parties' motion to stay discovery relies upon a motion to dismiss that has not yet been  
 22 filed, much less fully briefed. Docket No. 30 at 2 (Defendant will be filing a motion to dismiss on  
 23 June 13, 2025). Therefore, the Court cannot conduct the required preliminary peek to determine  
 24 if staying discovery is warranted.<sup>3</sup> The parties' joint motion to stay discovery therefore fails at the  
 25 outset.

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27 <sup>3</sup> Separate and apart from the Court's obligation to apply the law correctly as set forth in  
 28 *Bateman*, the Court is encouraged to engage in forceful judicial management of cases, *Sherman v. United States*, 801 F.2d 1133, 1135 (9th Cir. 1986) (per curiam), and the Court is not required to allow an unwarranted stay of discovery even if agreed upon by the parties, *see, e.g., Divine*

1 **III. CONCLUSION**

2 For the reasons discussed above, the motion to stay discovery is **DENIED**. The parties  
3 must file a joint discovery plan no later than June 12, 2025.

4 IT IS SO ORDERED.

5 Dated: June 11, 2025

6   
7 NANCY J. KOPPE  
8 UNITED STATES MAGISTRATE JUDGE

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28 *Wellness, LLC v. NFP Prop. & Cas. Servs., Inc.*, 2024 WL 2880285, at \*2 n.3 (D. Nev. May 17, 2024).